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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,163	12/15/2003	Kenji Sugiyama	P69392US0	2103

7590 11/01/2007  
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Washington, DC 20004

EXAMINER
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CHIO, TAT CHI

ART UNIT	PAPER NUMBER
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2621

MAIL DATE	DELIVERY MODE
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11/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/734,163

Applicant(s)

SUGIYAMA, KENJI

Examiner

Tat Chi Chio

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 10/12/2007 have been fully considered but they are not persuasive.

Applicant argues that Sugiyama et al. require temporal coding whereas claims 1 to 4 do not require such temporal coding, or the former performs two steps of coding (temporal coding and real coding) whereas the latter performs coding only once.

In response, the examiner respectfully disagrees. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., > Mars Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising,' the terms containing' and mixture' are open-ended."); < Invitrogen Corp. v. Biocrest Mfg., L.P., 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); Moleculon Research Corp. v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in

major amounts”). >In *Gillette Co. v. Energizer Holdings Inc.*, 405 F.3d 1367, 1371-73, 74 USPQ2d 1586, 1589-91 (Fed. Cir. 2005), the court held that a claim to “a safety razor blade unit comprising a guard, a cap, and a group of first, second, and third blades” encompasses razors with more than three blades because the transitional phrase “comprising” in the preamble and the phrase “group of” are presumptively open-ended. “The word comprising’ transitioning from the preamble to the body signals that the entire claim is presumptively open-ended.” *Id.*

Applicant argues that Sugiyama et al. do not teach the extraction of information on code amount of quantization extracted from the first bitstream, as a parameter indicating moving-picture coding difficulty.

In response, the examiner respectfully disagrees. Sugiyama et al. teach an amount of codes generated in each unit period of time is counted by the temporary code amount counter and a signal representing the count (namely, the amount of codes generated in each unit period of time) is then outputted therefrom. The outputted signal representing the count is the information on code amount extracted from the first bitstream.

Applicant argues that Sugiyama et al. do not teach the amount of quasi-generated codes is obtained from a parameter.

In response, the examiner respectfully disagrees. Sugiyama et al. teach the target transfer rate setting means is used to set a target transfer rate from the temporary amount of codes each unit period of time in such a manner that a total amounts of codes generated from the moving picture signals becomes a predetermined value.

Since an amount of quasi-generated codes is estimated to be required for achieving a given picture quality and it is obtained from the parameter per given period, the target transfer rate (required for achieving a given picture quality) is set from the temporary amount of codes each unit period of time (obtained from the parameter per given period).

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugiyama et al. (5,790,745).

**Consider claim 1**, Sugiyama et al. teach a method of controlling the amount of codes generated during re-coding in conversion of a first bitstream obtained by efficient coding of a moving-picture video signal to a second bitstream, the method comprising the steps of: extracting, from the first bitstream, at least either information on code amount or information on quantization, as a parameter indicating moving-picture coding difficulty (col. 12, lines 63-67 and col. 13, lines 1-3); obtaining, from the parameter per given period, an amount of quasi-generated codes which is estimated to be required for achieving a given picture quality (col. 13, lines 5-9); adjusting the amount of quasi-generated codes for each of the given period to obtain a target code amount (col. 13, lines 39-56); assigning the target code amount to a given portion of the moving-picture

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video signal so that a total code amount of the given portion of the moving-picture video signal matches a recordable total code amount for a storage medium for storing the given portion of the moving-picture video signal (col. 13, lines 39-56); and re-coding the first bitstream while performing code amount control in accordance with the target code amount, thus converting the first bitstream into the second bitstream to be recorded in the storage medium (11 of Fig. 4 outputs a second bitstream and the second bitstream is to be recorded in the buffer 21 of Fig. 8).

**Consider claim 2,** Sugiyama et al. teach a moving-picture recording method comprising the steps of: recording a first bitstream obtained by efficient coding of a moving-picture video signal in a first storage medium, under code amount control for targeting a given fixed transfer bit rate (VTR of Fig. 4 records the first bitstream); extracting, from the first bitstream, at least either information on code amount or information on quantization, as a parameter indicating moving-picture coding difficulty (col. 12, lines 63-67 and col. 13, lines 1-3); obtaining, from the parameter per given period, an amount of quasi-generated codes which is estimated to be required for achieving a given picture quality (col. 13, lines 5-9); adjusting the amount of quasi-generated codes for each of the given period to obtain a target code amount (col. 13, lines 39-56); assigning the target code amount to a given portion of the moving-picture video signal so that a total code amount of the given portion of the moving-picture video signal matches a recordable total code amount for a second storage medium for storing the given portion of the moving-picture video signal (col. 13, lines 39-56); and re-coding the first bitstream to convert the first bitstream into a second bitstream having a variable

bit rate while performing code amount control in accordance with the target code amount (Fig. 4); and recording the second bitstream in the second storage medium at the variable bit rate (11 of Fig. 4 outputs a second bitstream and the second bitstream is to be recorded in the buffer 21 (second storage medium) of Fig. 8).

**Consider claim 3,** Sugiyama et al. teach a moving-picture code amount control apparatus comprising: an information extractor to extract at least either information on code amount or information on quantization, as a parameter indicating moving-picture coding difficulty, from a first bitstream obtained by efficient coding of a moving-picture video signal, and obtain, from the parameter per given period, an amount of quasi-generated codes which is estimated to be required for achieving a given picture quality (col. 12, lines 63-67 and col. 13, lines 1-3, and col. 13, lines 5-9); a target code amount setter to adjust an amount of quasi-generated codes for each of the given period to obtain a target code amount and assign the target code amount to a given portion of the moving-picture video signal so that a total code amount of the given portion of the moving-picture video signal matches a recordable total code amount for a storage medium for storing the given portion of the moving-picture video signal (col. 13, lines 39-56); and an encoder to re-code the first bitstream while performing code amount control in accordance with the target code amount, thus converting the first bitstream into a second bitstream to be recorded in the storage medium (7 and 10 of Fig. 4).

**Consider claim 4,** Sugiyama et al. teach a moving-picture recording apparatus comprising: a first recorder to record a first bitstream obtained by efficient coding of a moving-picture video signal in a first storage medium, under code amount control for

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targeting a given fixed transfer bit rate (VTR of Fig. 4); an information extractor to extract, from the first bitstream, at least either information on code amount or information on quantization, as a parameter indicating moving-picture coding difficulty, and obtain, from the parameter per given period, an amount of quasi-generated codes which is estimated to be required for achieving a given picture quality (col. 12, lines 63-67 and col. 13, lines 1-3, and col. 13, lines 5-9); a target code amount setter to adjust an amount of quasi-generated codes for each of the given period to obtain a target code amount and assign the target code amount to a given portion of the moving-picture video signal so that a total code amount of the given portion of the moving-picture video signal matches a recordable total code amount for a second storage medium for storing the given portion of the moving-picture video signal (col. 13, lines 39-56); a bitstream convertor to re-code the first bitstream while performing code amount control in accordance with the target code amount, thus converting the first bitstream into a second bitstream having a variable transfer bit rate (7 and 10 of Fig. 4); and a recorder to recode the second bitstream in the second storage medium at the variable transfer bit rate (21 of Fig. 8).

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

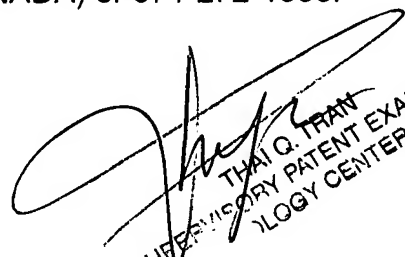


mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tat Chi Chio whose telephone number is (571) 272-9563. The examiner can normally be reached on Monday - Thursday 8:30 AM-6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on (571)-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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